

**DCNC2003/1895/N - PILOT PLANT FOR
ACCELERATED COMPOSTING OF ORGANIC
MATERIAL FOR 5 YEARS AT WHARTON COURT,
WHARTON, LEOMINSTER, HEREFORDSHIRE, HR6
0NX**

For: Bioganix Ltd at above address.

Date Received:

1st July 2003

Ward:

Leominster South

Grid Ref:

51022, 55925

Expiry Date:

26th August 2003

Local Members: Councillors R Burke and J P Thomas

1. Site Description and Proposal

- 1.1 The application site is at Wharton Court, about 3.1 Km south of the centre of Leominster immediately off the A49(T). Wharton Court is a Grade II* Listed Building dating principally from the 17th century. Two barns close to the Court are themselves separately and specifically listed as 16th century and combined 17th and 18th century respectively. The nearest houses are at Wharton Court (about 35m to the south-east), Stone Farm (350m to the west) and around Wharton Bank (13 houses 250 - 400m to the south-west).
- 1.2 The River Lugg SSSI/cSAC is about 250m to the east of the site.
- 1.3 The application site itself is irregularly shaped about 80m x 90m along the longest dimensions.
- 1.4 The proposal is retrospective and is for the retention of a Pilot plant for the accelerated composting of organic material for 5 years. The applicant operates a novel in-vessel feather composting business. The operation is carried out on a Pilot scale to determine the efficacy of the process for degrading feather in accordance with the requirements of the Animal Byproducts Order. The site has been operational since February 2002. The development began within a former agricultural building which was given permission for a change of use to commercial workshops in October 2000 under ref: NC2000/2267/F. There were no restrictions on that use, apart from two conditions requiring commencement within 5 years and improvements to the access with the Trunk Road; the original development was therefore within that permission. Had it remained within that building Officers consider that it would have been in accordance with that permission regardless of how offensive it became and that enforcement under planning law would not have succeeded. It would not however have been immune from enforcement under other legislation (e.g re nuisance or waste management). Because the operation extended outside of the permitted 'workshop' area it became unauthorised. The application has been submitted as a result of subsequent investigation by the Council's Enforcement Officer and amended as a result of inspections by the Council's Environmental Health Officer. The operator has made a number of alterations to the process to meet these. Permission is now sought

for the temporary retention and use of new and altered buildings, the process equipment, external abatement facilities and an external bio filter until 1 July 2008.

- 1.5 The process itself uses a loading shovel and mixing vessel to mix poultry and stable manure (20%), poultry (feather) waste (61%), separated kitchen waste (8%), paper (5%) and green waste (5%) within an enclosed building. These materials are mixed and fed into a processing vessel circa 20m long x circa 4m in diameter, rotating under heat, at 4 revolutions per hour. Treated compost is then screened and dried before being loaded into bulk trailers for delivery to farms where it is used as a composting material. Loading and processing take place within a corrugated iron building under negative air pressure. External equipment consists of 5 air scrubber towers, to clean exhaust air of dust, particles and odours, a series of chemical treatment tanks, covered conveyors and a large external bio filter from which treated air discharges to atmosphere.
- 1.6 The application was deferred at the last meeting and the report has been amended to address Members' concerns.

2. Policies

Waste Strategy 2000
Planning Policy Guidance Note 10

Hereford and Worcester County Structure Plan

WD2 – Location and Need
WD3 – General Development Control criteria
E14 – Adequate Disposal of Waste
E15 – Dangerous or difficult Waste
CTC3 – Protection of Sites of International Importance
CTC7 – Protection of Listed Buildings
CTC9 – General Development Control Criteria

Leominster District Local Plan

A1 – General Development Control Criteria
A3 – Protection of International Sites
A4 – Protection of SSSI
A13 – Monitoring Pollution Control
A14 – Safeguarding Water Resources
A15 – Development and Watercourses
A18 – Listed Building and their Settings
A24 – Scale and Character of Development
A36 – New employment in Rural Buildings
A70 – Traffic
A76 – Parking

3. Planning History

NC1999/2252/F – Proposed mushroom growing unit, new barn, extensions to existing barn, new farm buildings, associated landscape works – granted 8th March 2000

NC2000/2267/F – Change of use from agricultural workshops to commercial workshops – Granted 18th October 2000

Adjoining Land

97/0461/S – Continuation of earth barrier as noise/visual barrier alongside the A49 – Prior Approval Required 1st July 1997

97/0788/N – Continuation of Earth Barrier as noise/visual barrier alongside the A49 – Permission granted 17th December 1997.

NC99/2318/F – Change of Use from agricultural workshops to commercial workshops – granted 8th March 2000.

4. Consultation Summary

- 4.1 The proposal was advertised on site, in a newspaper and 29 neighbour notification letters were sent out.

Statutory Consultations

- 4.2 Environment Agency: Originally imposed a Holding Objection, requiring a Flood Risk Assessment of the site and recommended an Ecological Survey. They have subsequently withdrawn their objection and confirm that the application site is outside of the theoretical 1 in 100 year flood level and therefore outside of the 1 in 100 year floodplain of the River Lugg. Conditions are recommended to require surface water drainage schemes to be agreed to control pollution. The need to protect the River Lugg SSSI/cSAC and water voles is emphasised.
- 4.3 River Lugg Internal Drainage Board: Note that if there is any increase in discharge volumes or rates of discharge a consent will be necessary and that the developer will need to ensure discharges from the site do not adversely affect adjoining watercourses or the River Lugg SSSI/cSAC.
- 4.4 English Nature: State that “whilst there have been no discernible downward environmental trends arising from the operation of this plant by the river Lugg SSSI/cSAC, it is good to have the safeguards present. English Nature commends the efforts that you have placed on securing regulation at this site in the form of this retrospective application.”

In a subsequent letter they note, “It is clear from the nature of the process that the threat considerations which were raised at a recent application are probably unfounded, as such English Nature is fairly neutral on the proposal.”

- 4.5 Highways Agency: Have no objections.
- 4.6 Network Rail: Do not wish to comment.
- 4.7 English Heritage: Originally commented that they “regard this as an inheritantly unsuitable location for an expanding and intensive industrial activity. It creates an alien neighbour for this fine 17th Century house and degrades the character of its historic setting. It is difficult to see how this scale of construction and activity could be adequately mitigated by landscaping measures – note the visual impact for example of building 4... English Heritage therefore objects to this application.”

Following on site discussions with officers they have now withdrawn their objections provided that any permission is time limited to 5 years and there is a binding

commitment to a strategy (as set out in outline by Mr Helme in the document accompanying his letter of 26th March) ...this will need detailed agreement for the immediate implementation of some landscaping and any necessary holding repairs for the historic farm buildings.

- 4.8 DEFRA: Officers consulted DEFRA because the DEFRA website appears to endorse the application. DEFRA are adamant however, that this is not the case, and that the application does not fall within the (Loss of Agricultural Land based) consultation in the GPDO and that DEFRA does not therefore make any comments.
- 4.9 County Transportation Manager does not wish to restrict the grant of permission but expressed concern about the need for adequate parking and turning space and the site layout and that access should only be via the trunk road not via the over bridge to the B4361.
- 4.10 EHO has submitted 4 detailed responses, summarised:

“This service has received a large number of complaints regarding malodorous emissions from the composting operation at the above site. The complaints are mainly from the residents of Stoke Prior, Ford Bridge and Wharton Bank, however complaints have also been received as far away as Leominster. Complaints are also occasionally received from persons travelling on the A49...”

“The information available to me as regards this proposal in the main indicated that should proper controls and practices be employed that it can be undertaken without causing odour nuisance. If this application is successful it will be subject to the requirements of a waste disposal licence which will impose condition as regards such controls and practices...”

“The odour plume analysis suggests that the odour emissions from the composting can be treated to a level that should not cause nuisance nor give rise to a loss of residential amenity. The sampling done shows clearly that there is a substantial improvement in the removal of odour from the extract gases once they pass through the Biofilter achieving a reduction in odour of approximately 98%. Prior to the introduction of this filter the odours emitted through the exhaust system were at a much greater concentration and gave rise to numerous complaints and were in my opinion unacceptable. Information available to me in the way of odour monitoring in the main supports the conclusions of the odour plume analysis, the exception being the observations by residents keeping records.

It is difficult to check on the source of the odour with this type of report, however there are instances where odour is attributed to the Biogonix plant when other activities were taking place in the area, which could account for the nuisance. For example, I would bring your attention to the reference to a group of tourists deciding not to visit Leominster on the 1st April. Investigation of complaints from residents of Leominster at that time identified the source to be manure spreading on land near to the new Leominster Industrial Estate.

The records provided are useful in indicating trends and they show an improvement. Reports of odour are not now as frequent, often being less intense and of short duration. It is clear, however, that the residents keeping the records do not find the situation acceptable.

Officer observations since February only regularly identify odours on the A49 adjacent to Wharton Court. However, these are not at a level that could be regarded as a nuisance.

I have discussed the Odour Plume Analysis with the Environment Agency Officer responsible for this area who advises that although written confirmation that their Air Quality experts are satisfied is not yet available, it is not, however, expected that there should be any fundamental concerns.

If it is minded to grant planning permission it may be appropriate to require that the integrity of the buildings etc is checked by smoke testing or similar and that enclosed conveyors are provided to transport materials between buildings...

... that lorries should be sheeted and that it is not clear if the noise worries raised relate to the operations at Bioginix or some other activity on the Wharton Court site.

I would therefore conclude that whilst I appreciate concerns expressed by residents, it may prove difficult to defend on appeal on the grounds of odour nuisance.'

- 4.11 Head of Conservation: Notes that this tall, stone-built Jacobean house dominates the flatlands formed by the Lugg and the Arrow and must have been built to be seen and admired. Four storeys tall, the prominent chimneys rising from each corner, it commands the valley from Leominster to Hampton Court. Pevsner described it as 'forbidding' and indeed it is. The presence of the 17th Century to the north of the court suggests an agricultural livelihood has always been associated with this place. Although railway, trunk road and bypass break up the estate, the powerful presence of the house is still very evident along each of these routes. "The nature of the expansion at Wharton Court and the spread of its operation seriously threatens the visual quality of the house within its setting. As part of plans for agricultural diversification, a series of functions have stealthily invaded the area to the north of the Court house and its appearance is now marred by industry. The latest application to retain sheds and containers will further contribute to the blight that is currently affecting the enjoyment of the Court."

This retrospective application is to retain a 12-metre high steel clad shed to one side of an existing modern barn to the northwest of the Court. The application also seeks approval for the retention of some 9 metre high industrial containers and associated sheds. All of these new buildings may be seen within the same field of vision as Wharton Court and are in close proximity to the 17th Century timber framed barns. The new 12-metre high building is extremely prominent, so much so that it competes with the Court for attention. From whichever direction the Court is approached, but more especially from the north the new building is so visually dominant that it itself has become the 'forbidding' element that is robbing the house of one of its most noted qualities. In the same way the humble vernacular quality of the 17th Century timber framed barn is completely dwarfed by its neighbours.

In principle, agricultural diversification is well supported and is to be generally encouraged especially where compatible new uses can contribute to the upkeep of the historic property. Indeed PPG 15 (3.5 para 4) advises that this issue should form part of the consideration for listed building consent. However, the operations at Wharton Court which by stealth spread in both scale and type so that the site resembles an industrial estate rather than a traditional farmyard and the 17th Century ambience of the place is quite lost amongst it all. PPG 15 (3.3) recognises that 'minor works of indifferent quality which may seem of little importance, can accumulatively of very

destructive... and I am of the opinion that this application to regularise... business would serve to further erode the quality of the setting of the house.

On the setting of listed buildings, PPG 15 (2.17) further advises that 'tall or bulky buildings might affect the setting of listed buildings at some distance and alter the historic skyline' given the fact that this new building can be seen for some distance along the valley and that it competes with the outline of the older, I feel that this affect will be harmful. Under policy A18 of the District Local Plan application, which adversely affect the setting of a listed building, should be refused. I would advise that this application adversely affects the setting of Wharton Court and should not therefore be granted.

5. Representations

- 5.1 Humber and Stoke Prior Group Parish Council, originally recommended approval, subject to the applicant obtaining a waste management licence, a trial period of several months to assess odour emissions, before both the plant reaches full capacity and full planning permission is given... In a subsequent letter they commented that unless the smell nuisance is eliminated by 10th December 2003 the Council will withdraw its approval and object on the grounds that the company is not capable of operating without the severe nuisance to the local community. On December 19th the Parish Council withdrew their support and objected.

They have subsequently provided 3 detailed assessments of odour monitoring of the site and repeat their position that "the firm cannot proceed until and unless the smell is eliminated permanently."

- 5.2 Leominster Town Council originally recommended that permission should be refused because the process continues to cause severe odour problems over a very wide area and would like to see the problem under clear control before a temporary permission for 5 years should be allowed. In a subsequent letter on 6th January 2004 they commented that "the company had been granted plenty of time in which to refine their emission control and had failed miserably... that travel along the Leominster Bypass is regularly affected by strong, foul odours and in certain conditions, the Town of Leominster is still seriously affected. Leominster Town Council feel that the company has been given both time and support in perfecting a process which severely affected the local community for many months and has failed in that aim. (They) strongly recommend that the planning permission be withdrawn and the company be obliged to cease operation of the process which causes foul emissions. They "consider it unthinkable that the residents of a large area to the north of our County should be subjected to any further episodes of very unpleasant and uncomfortable daily living conditions."
- 5.3 Hope Under Dinmore Parish Council originally recommended that planning permission should not be granted until members have held a site inspection and the River Lugg IDB have been consulted (because of the possibility of contamination), that permission should only be granted for one year periods until the operation is nuisance/noise-free, in accordance with the Waste Management Licence and the quantity proposed for treatment can be properly maintained. They have subsequently (December 2003) withdrawn their support 'on the grounds that the firm is not capable of eliminating the smell nuisance,... that the plant is irretrievably flawed. It should not be operating'.
- 5.4 19 Letters of objection have been received from:

Mrs L Hazel, Yew Tree Cottage, Brierly enclosing a petition signed by 7 people.
Mr & Mrs Evans, 1 Wharton Lane Cottages, Wharton
Mr & Mrs Jones, Sunnyside, The Street, Poynings, West Sussex
Mrs J Taylor, 44 Castle Fields, Leominster
Mrs S Heckler, Moriah House, Hornsteffan, Camarthenshire
Mrs G M Wainwright, Railway Cottage, Stoke Prior
Mrs J Biddle, Fernside, Stoke Prior
Mrs C Proctor, 15 Kenwater Close, Leominster
Mrs J O Magridge, The Prill, Stoke Prior
W G & C M Smith, 2 Wharton Lane Cottages, Wharton
Mrs C K Patterson, Wharton Cottage, Wharton Bank
Mr I T Hamilton, Cooks Folly, Wharton
Mrs M A Jones, Stone Farm, Stoke Prior
Mr & Mrs Evans, The Dalmonds, Stoke Prior
A E Luck, Highlands, Wharton Bank
B G Scott, Bannut Tree Cottage, Fordbridge, Leominster

5.5 The principal points of objection are:

- Misleading claims by the applicant
- Noise nuisance
- Undesirable traffic effects
- Impact on the Flood Plain
- Adverse effects on the setting of a historic building
- The unsaleability of local houses
- The risk of pollution
- The unsuitability of location

An almost universal complaint however has been of the odour nuisance produced on the site which is generally described by respondents in terms of being repulsive, obnoxious, a putrid stench and intolerable to the point of causing sickness and distress and that these smells prevented the enjoyment of houses and gardens, seriously affected the quality of life, the enjoyment of food, social life, have required windows and doors to be closed causing particular difficulty in hot weather and generally cause adverse effects on local businesses and tourism.

One letter of support has been received from J A Ruck of Longmead, Elms Green, Leominster HR6 0N5 who states that 'It is true up to December 2003 there had been a very strong emission during the process but since December there has been no smell at all owing to the new fertilising systems. Mr Helme's process prevents the waste going to landfill sites and is good for the environment which we should all support.'

Some letters note that the incidence of smell nuisance has been very much reduced since the bio-filter was built – but that isolated events still occur.

5.6 The full text of these letters can be inspected at Planning Services: Minerals & Waste, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

- 6.1 Members should be aware that another application for retrospective planning permission for the continuation of use of an agricultural yard as a waste transfer station for demolition and excavation materials (ref. NC2003/0753/N) is also outstanding and adjoins this application site. Officers hope to bring a report to the Sub-Committee soon.
- 6.2 The Sub-Committee held a formal site inspection on 6th April 2004.
- 6.3 Members should be aware that if permission were to be granted the applicant would need a Waste Management Licence from the Environment Agency. The Licence would control the kinds of waste involved and how they are to be treated in order to minimise the risk of pollution. The Agency has discretionary powers to refuse licences, require them to be modified and has powers of prosecution. A licence cannot be granted until a planning permission has been issued.

The Plant has recently been temporarily licensed by DEFRA to compost animal and catering waste under the Animal By Products, Regulations 2003. Full approval is subject to laboratory testing during the validation period (i.e until 28th/07/04).

The DEFRA Licence is parallel in nature to Waste Management Licences issued by the Environment Agency. The need for and nature of these bodies' licences are material planning considerations but PPG 23: Planning and Pollution Control, is explicit that "the planning system should not be operated so as to duplicate controls which are the statutory responsibilities of other bodies" and that "Planning authorities should work on the assumption that the pollution control regimes will be properly applied and enforced. They should not seek to substitute their own judgement on pollution control issues ..." It is within DEFRA's powers to issue or refuse a licence under the Regulations and to prosecute breaches of any licence but the operation of the Regulations are not matters which can be given any weight here.

- 6.4 The application itself raises complex and contradictory issues, for simplicity's sake these are dealt with under the following headings:

National and Regional Waste Policy
SSSI/cSAC Issues
Use Class Issues
Structure and Local Plan Waste Policy
BPEO
Listed Building Issues
Alternatives
Conclusion

National and Regional Policy Context. The National Waste Policy is in essence based on the European Framework Directive on Waste, which has been brought into English law and the principles of sustainability. The published 'Waste Strategy 2000' describes the Government's vision for managing waste and sets out guidelines on how the changes necessary will be made. The Strategy expects planning decisions for waste treatment and disposal to be based on a local assessment of the Best Practicable Environmental Option (BPEO) for individual waste treatments.

- 6.5 The principles of waste planning are set out in PPG 10. The concept of BPEO must be interpreted widely and is discussed later in the report.

- 6.6 The West Midlands Regional Technical Advisory Body for Waste has submitted a draft Regional Waste Management Strategy to the regional planning body. The Strategy identifies the need for further facilities in the County to meet National targets. It does not prescribe specific methods or locations for waste treatment facilities and it does not deal with this particular waste stream. The consultation draft UDP incorporates the basic requirements of both the Waste Strategy 2000 and the Draft Regional Waste Management Strategy, but again does not specifically address this waste stream. In general however the proposal is in accordance with the principles of both regional and draft UDP Policy and it could not be refused on these grounds.
- 6.7 SSSI/cSAC The application site adjoins the River Lugg SSSI, cSAC the protection of which must be given the highest priority. Neither English Nature or the Environment Agency consider however that the application would have any adverse implications for the designated sites or species. Although the need to prevent pollution of the river or watercourses which feed into it is of the greatest importance these are dealt with below under general headings of pollution control and there are no reasons for refusing permission on the grounds that it would have an adverse effect on the river Lugg SSSI/cSAC.
- 6.8 Use Class Issues At the last meeting, Members asked for clarification of the Use Class Issues involved. The matter is a complicated one.

The existing use

The main process building consists of an unauthorised extension to an earlier building. That earlier building was granted permission in October 2000 under ref. NC2000/2267 for use as "Commercial Workshop" without clarification of what this meant or conditions to define the use. In the circumstances 'workshop' can reasonably be interpreted as "use for the carrying on of an industrial process" and since it was not restricted to a B1 use must reasonably be B2.

The proposed use

A Composting Place, involving animal or vegetable matter, is a B2 use. Although composting has traditionally been a more passive operation, it could be argued that the proposal falls within the classification. It is significant that a Waste Treatment Place is also B2.

Officers consider that there is a parallel between the application and sewage treatment. Both involve treating objectionable organic waste to make it possible to dispose of it to land as a soil improver. Some sewage treatments even involve heating and mixing materials in the same sort of way as this proposal; these are B2 uses. In the circumstances, officers consider that the proposal should therefore be considered a B2 use.

The corollary must be that there is nothing to prevent permission NC2000/2267/F being used for this purpose. Retrospective permission is, however, necessary for the extension of that use beyond the (very small) area of this permission.

- 6.9 Structure Plan and Local Policies Structure Plan Policies for waste, notably policies WD2 and 3 prescribe that the site for the disposal of waste should have regard to the geographical and transport relationship between the sources of waste and the proposed handling or disposals, the cumulative impact of those facilities and the need for them and set out a list of criteria against which applications will be considered.

- 6.10 Other policies in the Leominster District Local Plan amplify these and relate to the wider implications and effects of proposals. These issues are simplified under general headings:

Location/Proximity to Waste Sources

The proximity of waste management facilities to the sources of waste handled is a matter of considerable importance and the 'Proximity Principle' is now enshrined in Government Policy and a central part of the concept of BPEO. In this case the application site is located on the trunk road network and is fairly well placed to take deliveries of waste minerals from the north of the County and has good links to the wider road network. Much of these materials are relatively locally produced and it could not be argued that the proposal could be refused on the grounds that it did not comply with the Proximity Principle.

BPEO (Best Practicable Environmental Option)

The concept of BPEO is central to national waste policy and the Courts have held that it is a consideration, which must become in mind at all times by the decision maker. The Council has adopted a BPEO for the major waste streams, that for commercial and industrial waste, (which it could be argued includes the materials involved here) is to reduce the element landfilled to 23%, increase recycling to 73% and thermally treat the remaining 4%. The proposal is to increase recycling of waste streams, which at least in part could be described as originating from food preparation. If this is accepted it would in principle be in accordance with the BPEO. Even if the waste stream is defined as agricultural the application is to develop a means of transforming a fairly difficult waste, into compost quickly and in principle this must be desirable particularly in this County where poultry processing is important and large scale. As such it conforms to the principle of the Waste Hierarchy.

Effects of Surface and Ground Waters

The protection of local water sources from pollution is of the highest importance – the nature conservation interests of the River Lugg SSSI/cSAC are particularly vulnerable. There are no suggestions however from the statutory consultees that local surface and ground waters could not be adequately protected by the imposition of conditions. If permission were to be granted Officers would argue that these are essential. The Environmental Agency's advice is that Sustainable Urban Drainage Schemes (SUDS) should be used. If permission were to be granted, Officers would recommend that the submitted schemes should, subject to English Nature's advice, include works to adjoining ditches under the applicants control to increase their natural cleaning systems to protect and enhance the Lugg SSSI.

Effects on Nature Conservation

The site adjoins the River Lugg and the land between the river and the site is of very high nature conservation value. The applicant has submitted a survey of the flora and fauna present in the drainage ditches and pond at Wharton Court (which are the most important features of the application site regarding the SSSI/iSAC designation) by the Wild Things Consultancy Of Ludlow. The survey found that the ditch to the rear of the offices was the least biologically diverse and most enriched with nutrients. (This is part of the reason why officers recommend that if permission is given, a condition requiring biological filtration of this ditch should be considered). The ditch emptying into the Lugg was biologically the richest and there were indications that all of the water

features were connected during times of flood. The need to ensure the adequacy of the surface water system is therefore re-enforced by the report. Evidence of two protected species, Barn Owl and Otter was detected on site. There is no reason to assume that the development itself could adversely affect these provided that surface water pollution is prevented. The Environment Agency have expressed concern about the need to ensure that any vermin control measures do not poison Water Voles, and this could usefully be prevented by condition.

Effects on the Landscape

The application site is outside of but overlooked by the Area of Great Landscape Value. The 'tower' added to the barn in the north side of the site is particularly prominent and Officers consider distracts from views of the AGLV for some distance along the A49. The landscape of the application area itself is markedly flat with long views north to south along the river valley. Historically Wharton Court dominated this view. A number of intensive developments have diminished this effect over the years. The (permitted) barn to the north of the site and the bund alongside the A49 and north of the site (some of which is permitted) are significant in this respect. The 'tower' added to this barn is particularly so. The weight to be given to the effect of this tower, when considered against other developments on and around the site must be a matter of opinion. Officers' advice is that the tower has an adverse impact on the local landscape and would recommend that it should be refused on these grounds if the application were for its permanent retention.

Effects on Local Settlements and Amenities

The development applied for is not visually attractive but only limited parts are visible from adjoining public land. What is visible from Wharton Bank, the settlement closest to the site, dominates the view and could be considered a disamenity. Other effects on local settlements and amenities must include additional traffic (considered below) and noise and dust/litter and vermin. Objections have drawn attention to these. It must be emphasised that all of these matters could be controlled under the Environmental Health Officers 'nuisance' legislation and any Waste Management Licence that might be granted. They are however material considerations to the planning application. Officers have not found sufficient evidence to justify refusal of permission on these grounds. Identifying the extent that the application site is responsible for expressions of concern about noise has proved particularly difficult. It is possible that other activities within Wharton Court complex (e.g. in connection with potato or wooden box storage) may have generated noises which objectors have attributed to the application. The Environmental Health Officer's advice is that the noise emitted from the plant is generally a steady low-level hum. Vehicles are loaded and unloaded within the process buildings and should not generate excessive noise. It would be fair to say however that the development has not improved the amenity of local people generally and if permission were to be granted Officers would recommend that a precautionary condition requiring noise assessments must be submitted should be imposed if the Environmental Health Officer considers that the potential noise nuisance may have developed. Conditions to keep the site tidy and free from litter/waste should be imposed.

The most important effect on local amenities from the development has undoubtedly however been the creation of unpleasant odours. Some Members may have experienced these and it is not easy to discuss the issue in the measured way necessary in considering a planning application. Officers' advice is that Members should have no illusion that the objections made by local people were unfounded or

unreasonable and that the smells originating from the plant up to the end of 2003 were repellent and must have been very distressing to local people. If these smells had continued in the same way to the present day Officers would have recommended refusal on the grounds of the unacceptable effect on local amenities, residents and visitors to the area. Members should be aware however that the proposal is for the development of a pilot plant for a limited period. The process is by implication experimental and subject to change. Over the past year these changes have been considerable and have significantly improved the operation of the plant. The Council's Environmental Health Officer has monitored the site since 2002 and found much that was objectionable. Since the beginning of February 2004 however he has received only 25 individual complaints about the site, referring to only 5 specific events. Of these complaints 4 were made before the current system was operating correctly, 19 were for odours, which were not from the Biogonix plant, and 2 were from sites, which could not be confirmed. His own routine monitoring over the same period at Elms Green, Marlbrook Farm, Stone Farm, Pound Cottage and Ashwood House (not specifically in response to complaints) found slight odours on only 3 occasions (by Stone Farm), one incident coinciding with a malfunction of the abatement equipment. He did find that periods of odour can still be observed on the A49 near the site but that since the biofilter was commissioned their intensity has much reduced and can only be described as faint. Subjectively he found that the odour detected does not appear to be offensive.

The applicant has submitted an Environmental Quality Odour Emissions Sampling and Odour Plume Modelling report and a subsequent supplement, undertaken by ADAS Environment of Wolverhampton. The conclusions of the report are (in summary) that the system may be regarded as 3 gaseous exhaust generators (the main composter system, the associated feedstock pre-store and preparation facility and the areas for enclosed conveying and handling within the main building). These generate gases, which are discharged to atmosphere through a very sophisticated gas clean up system. The buildings are all sealed and operate under a suction pressure so that any air movement is into the buildings and ultimately through the gas extraction system.

ADAS found that the air scrubbing system is very effective and the further treatment of exhaust air through the bio filter reduces the odour concentration to levels that are very good to excellent in comparison to industry standards.

DEFRA: Code of Good Practice for Air states 30 ouE/m^3 as typical i.e. reasonable for background odour in agricultural areas. Allowing for peaking above a 'mean' level is presumed and ideally levels of 10% of the peak level are the aim. "The odour plume analysis reveals that with atmospheric dispersion caused by wind and other weather effects, acceptable standards ($<1.5 \text{ OUE/M}^3$) can be achieved at nearby receptors including at the nearest (outside) property 'Stone Farm'. Under a scenario of 'High Emissions' Stone Farm may be subject to a raised odour concentration level estimated at 4.5 OUE/M^3 . Given the agricultural status of Stone Farm and the emissions from Biogonix' process being described as 'earthy or compost' it may be determined that even the high 4.5 OUE/M^3 value would not be deemed an unduly adverse impact."

The Council's Environmental Health Officer requested clarification from ADAS about the report and has made detailed comments on it. ADAS confirmed that "facility air leakage tests have been undertaken and the sealing of the building and process have been found very effective."

The Environment Agency have chosen to review this specific Odour Plume Analysis report as part of their 'normal' assessment procedures. Any comments will be reported

orally. To date however the indication is that they are broadly satisfied with the methodology used. An important criticism of the ADAS report must however be that it treats Stone Farm as the nearest house and as an agricultural unit. Neither is true. Wharton Court itself is far closer and it can reasonably be assumed that the odour levels there are likely to be higher than at Stone Court. The submitted details show "normal" operating conditions of c.10 OUE/M³ at the Court (which is below the 30 OU/EM³ considered typical) and higher levels of a 50 OU/E³, (which are likely to be considered excessive by most people). These do not invalidate the report but they do underplay the undoubtedly adverse effects the operation has on the residents of Wharton Court. If the application were for the permanent retention of the development Officers would have been extremely concerned on these grounds. The application is however only for a temporary period and the Court is inhabited by the applicant, these are material factors.

In conclusion the Environmental Health Officer's advice is that "information available to me as regards this proposal in the main indicated that should proper controls and facilities be employed that it can be undertaken without causing odour nuisance. If this application is successful it will be subject to the requirements of a waste disposal license, which will impose conditions as regards such controls and policies. I would therefore conclude that whilst I appreciate concerns expressed by residents it may prove difficult to defend an appeal on the grounds of odour nuisance."

If permission were to be granted he recommends that conditions should be imposed to require the integrity of the buildings to be checked (for negative air pressure) that enclosed conveyors should be provided to transport materials between buildings and that lorries bringing waste in or compost out should be sheeted.

Local Road Network and Road Safety

The site has accesses to both the Trunk Road and the B4361. The Highways Agency has no objection to proposal. The Council's Transportation Manager has expressed concern about lorries exiting onto the B road and Officers recommend that if permission were to be granted a condition requiring a sign to be erected to direct lorries leaving the site onto the Trunk Road could be imposed. Officers advice is therefore that permission could not be refused on highway grounds.

Effect on Sites of Historic and Architectural Importance

There are 3 Listed Buildings on site. English Heritage and the Head of Conservation originally objected to the application and members should be under no illusion that Officers consider that it adversely affects the setting of all 3. The principal area of concern is the effect of the 'tower' to the north, which now dominates views of the Farm complex significantly undermining one of Wharton Court's most important qualities—the dominating effect it has, or rather had, on the landscape. That Wharton Court is a Grade 2* Listed Building i.e. one of the 6 or 7% most important buildings in the country, makes this effect particularly undesirable.

Officers have held on-site discussions with the applicant, English Nature and the Council's Historic Buildings Conservation Officer. At their suggestion the applicant has submitted a Vision Statement for the Court, which in essence, explains the history of the site as a centre of busy activity and the need for incomes from the site other than agriculture to subsidise its repair. These are material considerations and the general principle is in accordance with government policy. The weight to be given to this argument is a matter of judgement but must be recognised the Court has stood for

about 400 years and now needs considerable and expensive repairs. In principle temporary adverse activity generating funds for its long-term survival would be acceptable. English Heritage have withdrawn their objection on the understanding that conditions will be imposed to address issues relating to the maintenance and protection of the 3 Listed Buildings nearby, their setting and how the applicant's Vision Statement for the site can be realised. Officers consider that such conditions are difficult to apply. The applicant states that Bioganix is a community owned co-operative and that the only personal benefit that he receives is a salary for managing it. Officers consider that in consequence it could not be argued that there is any great necessity for the Composting Operation to be located close to Wharton Court. As a corollary that if permission is only to be granted for a short period it would not be reasonable to impose significant demands on the applicant. Officers share English Heritage's concern that the landscaping around the Court complex needs significant attention but do not believe that requiring such changes would be reasonable in the context of this application. The issue will, however, be addressed when the outstanding application for the Waste Transfer Station adjoining this site is referred to the Sub-Committee. The Council's Conservation Officer's advice is that a condition should be imposed requiring a condition survey of the three Listed Buildings to be provided. It is possible, for example, that the demolition/clearance operations proposed might adversely affect them, and the survey is justifiable on these grounds.

The effect of offensive odours on the setting of a Listed Building is difficult to assess. It could not be argued however that those affects are other than adverse and together with the visual effects of application must count towards the case for refusing permission. Officers advice is that a decision to refuse permission on the grounds of adverse effect on the Listed Buildings on site would be justifiable and defensible.

Alternatives

Unfortunately the issues in this use are not simple. Members should be aware that permission NC2000/2267/F is still extant and that if permission were to be refused and enforced the applicant could in theory revert to the original operation located in this building and could operate without further control from the planning system. It is likely that to do so the applicant would have to remove all the useful adjuncts developed over the last 2 years to improve the operation of the site and in reducing the scale of the activity would probably generate the same offensive odours that have caused local people such distress. Any such activity would be subject to enforcement by the Environmental Health Officer under nuisance legislation – but in practice such action is only likely to require works to be done to 'abate' the nuisance and could not prevent it. The Environmental Health Officer's comments that "it may prove difficult to defend an appeal on the grounds of odour nuisance" should be noted.

The Environment Agency has a duty to grant or refuse Waste Management Licences but it would be fair to say has found this a difficult case. It must be emphasised that they have not publicly stated any position regarding it. Your Officers assume that it is possible that if permission was refused and the operation could be entirely contained within the original building that a licence could be granted. Although a refusal of planning permission could be pursued it is possible that it might not therefore entirely remove the use itself and might lead to a reversion to the earlier seriously unsatisfactory position of 2 years ago.

The application itself is explicitly for a pilot project for a five-year period. Almost a year of this period has now passed. If permission were to be granted it could be done on explicit conditions that it ceased and that all the built elements constructed were

removed from the site by 1st July 2008. This could be enforced. The advantages would be that the applicant is able to refine the pilot project and would have time to develop an alternative site. The disadvantages would be that local people might be exposed to further disamenity and that the Council has accepted that adverse effects on the Listed Buildings are acceptable in the short term.

Conclusion

Officers believe that there are good indications that the site is now operating acceptably and it is possible that the odour nuisances of the past may have ceased. The applicant may therefore be on course to demonstrate the success of the proposal and given the time applied for, may be able to find an alternative site. The proposal can be effectively time limited by condition and this may therefore prove an acceptable compromise. Its continuation would mean temporary adverse effects on the setting of the 3 Listed Buildings, particularly the most important, Wharton Court itself, but on balance Officers consider that this short-term disbenefit could be seen against the possible benefit that an additional income stream for the repair of the house might create.

Members should also be aware that in Waste Planning terms the development of in-vessel composting has been difficult if this pilot project were to be successful it could have a wide application and lead to the development of a useful waste treatment technology. On balance therefore Officers recommend that planning permission should be granted.

S72(1)(b) of the 1990 Act expressly gives power to impose conditions requiring that a use be discontinued or that buildings or works be removed at the end of a specified period. This power is clarified in Circular 11/95 which advises inter alia, that, "a temporary permission will normally only be appropriate where the applicant proposes temporary developments, or when a trial run is needed in order to assess the effect of the development of the area ..."

The Circular notes that such a permission must be reasonable having regard to the capital expenditure necessary to carry out the development. In this case the applicant has expressly applied for permission for a "Pilot Plant ... for 5 years" and in supporting documents states:

"The current plant is intended to be operated only as a pilot plant. It is needed as a proving ground for the principles and technology of composting and as a demonstration of the effectiveness of the process, with a view to relocating the entire operation to a larger plant on allocated industrial land at the earliest opportunity."

It could not reasonably be argued therefore that the applicant was under any illusion that he was applying for a temporary permission. Officers have made it clear orally that any such will require the site to be cleared of all buildings, structures etc. associated with the application and the applicant has been asked to supply a plan and schedule indicating all of these. There should not therefore be any ambiguity that the proposal is for a specific, limited period and will be removed at the end of that time.

RECOMMENDATION

That planning permission be granted subject to the following conditions and any further conditions considered necessary by Officers:

- 1 - The use hereby permitted shall cease on 1st July 2008 and all of building 1, the high part of building 4 (i.e. that part not permitted under ref. NC1999/2252/F granted 8 March 2000), the scrubber tanks numbered 1, 2, 3, 4 and 5, the enclosed conveyor, two overhead ducts, the structure between building 4 and odour scrubbing unit no. 1, and contents of the bio-filter, and associated structures and works shown on plans 488/03 Rev B (May 04) and 488/04 Rev B (May 04) and described in Bioganix's letter of 10 May 2004, shall be removed from the application site before 1st July 2008.

Reason: In the interests of protecting the long term setting of Wharton Court and the two adjoining listed barns, of protecting the long term amenity of local people and visitors of the area, and because any longer use may have adverse environmental effects which would require further consideration.

- 2 - Not later than 1st July 2006 a scheme of work shall be submitted to the Local Planning Authority for their approval in advance in writing for the clearance of all of building 1, the high part of building 4 (i.e. that part not permitted under ref. NC1999/2252/F granted 8 March 2000), the scrubber tanks numbered 1, 2, 3, 4 and 5, the enclosed conveyor, two overhead ducts, the structure between building 4 and odour scrubbing unit No. 1, contents of the bio-filter and associated structures and works shown on plans 488/03 Rev B (May 04) and 488/04 Rev B (May 04) and described in Bioganix's letter of 10 May 2004, shall be removed from the application site before 1st July 2008, and for the restoration of the site to agriculture and to the condition permitted under ref. NC1999/2252/F and the approved scheme shall be fully implemented before 1st July 2008.

Reason: To ensure that the site is cleared and restored in a way which will not adversely affect the setting of Wharton Court, the two adjoining listed barns, the amenities of the local people and visitors to the area or the interests of the River Lugg SSSI/cSAC.

- 3 - Not more than 12,000 tonnes of material shall be imported into this site in connection with the development hereby permitted during any 12 month period.

Reason: In the interests of protecting the long term setting of Wharton Court and the two adjoining listed barns, of protecting the amenity of local people and visitors of the area and because any longer use may have adverse environmental effects which would require further consideration.

- 4 - A12 (Implementation of one permission only)

Reason: In the interests of protecting the long term setting of Wharton Court and the two adjoining listed barns, of protecting the long term amenity of local people and visitors of the area and because any longer use may have adverse environmental effects which would require further consideration.

- 5 - E02 (Restriction on hours of delivery)(standard hours)

Reason: To safeguard the amenities of the locality.

- 6 - E06 (Restriction on Use)(use as a pilot plant for the accelerated composting of organic material until 1st July 2008)(B2)

Reason: The local planning authority wish to control the specific use of the land/premises, in the interest of local amenity.

- 7 - Not later than 1st October 2004 a scheme for the provision of surface water drainage works and surface water regulation shall be submitted to the Local Planning Authority for their approval in writing. The approved scheme shall be implemented in full not later than 3 months after its approval in writing. No other impermeable surfaces draining into the approved system shall be constructed.

Reason: To prevent the increased risk of flooding.

- 8 - F25 (Bunding facilities for oils/fuels/chemicals)

Reason: To prevent pollution of the water environment.

- 9 - F28 (No discharge of foul/contaminated drainage)(standard reasons and to protect the interests of the SSSI/cSAC)

Reason: To prevent pollution of the water environment and to protect the interests of the SSSI/cSAC.

- 10 - F32 (Details of floodlighting/external lighting)

Reason: To safeguard local amenities.

- 11 - F34 (Restriction on level of illuminance of floodlighting)(after 'boundary' add 'and in the interests of highway safety')

Reason: To minimise the impact of the floodlights and to protect the residential amenity of nearby dwellings.

- 12 - F40 (No burning of material/substances)

Reason: To safeguard residential amenity and prevent pollution.

- 13 - F42 (Restriction of open storage)(after material add 'including any material intended for composting')

Reason: To protect the appearance of the locality and the setting of Wharton Court and the two listed barns and to protect the amenities of local people and visitors to the area.

- 14 - Not later than 24 hours after any request in writing from the Local Planning Authority the site shall be swept clean of any and all litter or waste material.

Reason: To protect the appearance of the locality and the setting of Wharton Court and the two listed barns and to protect the amenities of local people and visitors to the area.

- 15 - Not later than 31 days after any request in writing from the Local Planning Authority, as advised by the Council's Environmental Health Officer, a noise monitoring scheme shall be submitted to the Local Planning Authority for their approval in writing. The submitted scheme shall include:

- Noise monitoring locations
- Method and frequency of measurement in accordance with BS4142 1997
- Presentation of results and their interpretation within 7 days of measurement and
- Procedures to be adopted if noise levels go above 5d BA LAeq above background levels

Reason: To protect the amenities of local residents.

- 16 - All vehicles containing untreated material for composting or treated compost shall be sheeted with a tarpaulin when within the application site area unless wholly within one of the buildings hereby permitted for this use.

Reason: To protect the amenities of the local residents.

- 17 - With the exception of the external bio filter the general building structure and ventilation of the development hereby permitted shall be designed to contain fugitive emissions and prevent their escape into the open air. To achieve this the ventilation system shall be suitable and sufficient to maintain negative air pressure at all times other than when the doors to the process buildings are open.

Reason: To protect the interests of residential amenity.

- 18 - All doors shall be kept firmly closed when not in use.

Reason: To protect the interests of residential amenity.

- 19 - Not later than 1st July 2005 details of the provision to be made for an owl nesting box within 400 metres of the application site together with details of the timing of its erection shall be submitted to the Local Planning Authority for their agreement in writing.

Reason: In order not to disturb or deter the nesting or roosting of barn owls.

- 20 - Not later than 31st August 2005 a scheme to ensure that water voles are not poisoned by the use of vermin control measures on site shall be submitted to the Local Planning Authority for their approval in writing.

Reason: In order to protect water voles.

- 21 - Not later than 1st July 2005 a scheme for the erection of a sign reading 'No left turn' to be erected at the junction of the exit road leading to the A49 and the B4361 for the instruction of drivers leaving the site shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details not later than 28 days of their approval in writing.

Reason: To direct traffic onto the primary road network.

- 22 - Not later than 3 months of any request in writing by the Local Planning Authority as advised by English Nature a scheme for the enhancement of the biological water treatment capacity of the drainage ditches between the application site and the River Lugg shall be submitted for the approval by the Local Planning

Authority in writing and the approved scheme shall be implemented in full within 3 months of its approval in writing.

Reason: In order to protect the nature conservation interests of the River Lugg SSSI/cSAC.

- 23 - Unless otherwise agreed in writing in advance only enclosed conveyors or pipework shall be used to transport materials between the buildings on site.**

Reason: To prevent pollution of the water environment and to protect the interests of the SSSI/cSAC and to protect the amenities of local residents.

- 24 - A structural and condition survey of Wharton Court and the two Listed Barns shall be undertaken in accordance with the Royal Institute of Chartered Surveyors' current good practice advice and submitted to the local planning authority for their approval not later than 1st July 2006. The submitted survey shall contribute to the understanding of the construction and development of these buildings and identify areas at risk as a basis for ensuring their protection and repair.**

Reason: To safeguard the character, appearance and stability of the three Listed Buildings adjoining the site.

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.